

**BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for Termination )  
of Probation of: )

**BARRY G. PIERCE, M.D.** )

File No. 12-2001-117073

Physician's and Surgeon's )  
Certificate No. G 50471 )

Respondent )  
\_\_\_\_\_ )

**DECISION**

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 11, 2008.

IT IS SO ORDERED January 11, 2008.

MEDICAL BOARD OF CALIFORNIA

By: \_\_\_\_\_

**Barbara Yaroslavsky**  
Chair, Panel B  
Division of Medical Quality

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DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Termination of Probation of:

BARRY G. PIERCE, M.D.  
1260 N. Dutton Avenue  
Santa Rosa, CA 95401

Physician's and Surgeon's Certificate  
No. G 50471

OAH No. N2007100134

Petitioner:

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Karl S. Engeman, State of California, Office of Administrative Hearings, on December 5, 2007, in Sacramento, California.

Petitioner Barry G. Pierce, M.D., appeared and represented himself.

David M. Carr, Deputy Attorney General, appeared on behalf of the Office of the Attorney General, California Department of Justice.

The matter was submitted on December 5, 2007.

**FACTUAL FINDINGS**

1. On July 1, 1983, Barry G. Pierce, M.D. (petitioner) was issued Physician's and Surgeon's Certificate No. G 50471 by the Medical Board of California (Board).
2. On October 4, 2001, an Accusation was filed against petitioner alleging unprofessional conduct. The grounds were sexual misconduct with a patient and gross negligence by virtue of such sexual misconduct.

3. On April 24 2002, the Board adopted a Decision based on a Stipulated Settlement and Disciplinary Order to which petitioner and his then-legal counsel agreed. The Decision was effective on April 24, 2002. The stipulated order included petitioner's agreement that the Board's prosecutorial staff (complainant) could establish a factual basis for the allegations of unprofessional conduct in the Accusation. The Decision revoked petitioner's physician's and surgeon's certificate and stayed the revocation for a period of seven years under specified terms and conditions. The terms and conditions including providing notice of the discipline to every hospital where petitioner has staff privileges, an education course tailored to the specific unprofessional conduct, an ethics course, a psychiatric evaluation, psychotherapy for the first five years of probation, a bar to petitioner's treatment or evaluation of women patients for the first three years, cost recovery in the amount of \$4,000 payable in installments, and other standard terms and conditions.

4. Petitioner filed his request for termination of probation with the Board on or about November 27, 2006. Following a review by the Board's investigative staff, the matter was referred to the Office of Administrative Hearings on September 28, 2007.

5. Petitioner did not, by the terms of the stipulated order, admit to the specific factual allegations in the Accusation and he disputes the allegation that he fondled the female patient during a therapy session. He does readily concede that he entered into a sexual relationship with the woman who was his psychiatric patient. The two moved into a home together along with their pre-teen daughters. When the relationship ended several months later, the woman filed a complaint with the Board and law enforcement authorities. While not alleged in the Accusation nor referenced in the stipulated order, petitioner was convicted, upon a plea of nolo contendere, of having sexual relations with a patient. The court placed petitioner on probation for three years on terms and conditions substantially similar to those imposed by the Board.

6. Petitioner is in compliance with all the terms of his probation. He completed the psychiatric evaluation on June 11, 2002. He has been in therapy with Seymour Radin, M.A. He has completed the ethics course and all required extra continuing medical education courses. He paid the cost award in full and he is current in his payments for the probation monitoring costs. Petitioner did not treat or evaluate any female patients for the first three years of probation. He notified the hospitals where he has staff privileges of his probationary status. Petitioner also successfully completed his criminal probation.

7. Three letters are attached to the petition. One was authored by petitioner's psychotherapist Mr. Radin. In the letter, Mr. Radin expresses that in the years that he has worked with petitioner, it has been clear that the source of his ethical transgression was not a predatory attitude toward women or a power drive. Rather, petitioner sincerely believed that he had found his proper mate and anticipated a long-term committed relationship. Psychotherapy has focused on the sources of unconscious thought which misled petitioner. This conclusion, as Mr. Radin noted, is consistent with the opinion expressed by Dr. Gottlieb who evaluated petitioner in June of 2002 in accordance with the terms of the stipulated order. The other two letters were written by fellow psychiatrists in the community where petitioner

lives and practices. Dr. Baron has known petitioner for ten years. Dr. Baron described petitioner as an acknowledged expert in psychotropic medications. He said petitioner is a "dedicated and meticulous clinician who in his office work has been scrupulous in his professionalism." Petitioner had been forthright with Dr. Baron about the events that led to his discipline. Dr. Baron had met the woman with whom petitioner had the relationship and described his conduct toward her as a loving relationship. He did not know at the time that the woman had been a patient and he believes petitioner's love for her clouded his otherwise good judgment. Dr. Baron expressed that it is clear that petitioner understands that he overstepped professional boundaries and now appreciates the dynamics which led to petitioner's transgressions. Dr. Baron has referred female patients to petitioner since the restriction relating to evaluation and treatment of females lapsed. Dr. Zucker has known petitioner for 16 years. He has worked with petitioner at a psychiatric hospital and served on committees together. Dr. Zucker expressed that in his opinion there is no chance of a recurrence of the behavior which led to petitioner's discipline.

8. Petitioner testified at the administrative hearing. Immediately after the complaint was filed against petitioner, he sought an evaluation from Dr. Peter Rutter, a nationally renowned expert in sexual exploitation of patients. Dr. Rutter performed a 13 hour evaluation of petitioner and concluded that petitioner had "fallen in love" with his former patient and there were underlying psychological reasons for his violation of standards to which he had previously rigorously adhered. This, as noted above, was also the conclusion of the Board's evaluator and that of petitioner's psychotherapist. Through psychotherapy, petitioner has gained insight into the source of what he now realizes was his fantasy of discovering the perfect woman for him. The psychotherapy has also assisted in the development of a healthy, loving relationship which petitioner describes as genuine mutual love. Petitioner appreciates the power imbalance between therapist and patient which absolutely bars a romantic relationship between the two.

9. Petitioner feels that his approximately five years and six months probation has been sufficient to ensure that no such conduct will ever recur. He has been humiliated among friends and colleagues. The probation has cost him a substantial amount of lost income for expert evaluations and other work he used to perform and cannot now perform while on probation. The psychotherapy and probation monitoring expenses have been burdensome. He has not been able to participate in grand rounds which he very much enjoyed. Petitioner maintains a solo general psychiatric practice, spending approximately two-thirds of his time providing psychotherapy and one-third in medication management. The latter area focuses primarily on medications for depression and anxiety.

## LEGAL CONCLUSIONS

1. Under Business and Professions Code section 2307, a person whose certificate has been placed on probation may petition the Division of Medical Quality for modification of penalty, including termination of probation. At least two years must have elapsed from

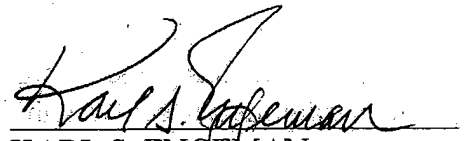
the effective date of the decision ordering the disciplinary action. That condition has been satisfied here.

2. Petitioner has made an impressive showing of rehabilitation. He has complied with all the terms of probation, both those imposed by the Board and by the court in his related criminal matter. He has, through psychotherapy, gained insight into the root psychological causes for his aberrant behavior. He does not shrink from his own culpability, but feels that he has learned his hard lesson over the more than five years since probation was imposed. His two colleagues who wrote letters on his behalf and his treating psychotherapist confirm petitioner's assertion that there is no chance that he would behave in the same manner again. Thus, continued probation is not required to protect the public.

#### ORDER

The petition of Barry G. Pierce M.D., for termination of probation is granted. Physician's and Surgeon's Certificate number G 50471 is fully restored.

DATED: December 10, 2007

  
KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings